In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 11, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO MOTIONS FOR LEAVE TO TAKE EVIDENCE AND FOR SEVERANCE

The State of Texas has moved for leave to take evidence, and for severance and separate trial and argument; the States of Florida and Mississippi have moved for leave to take evidence. The United States submits that Texas' motion for severance should be denied and that the motions for leave to take evidence should be denied at this time or deferred for hearing and decision with the Federal Government's motion for judgment.

1. *Texas' motion for severance should be denied.* In the light of representations made by Texas in its *amicus curiae* brief filed by leave of the Court, *United States* v. *Louisiana,* 353 U. S. 980, this Court has heretofore determined that "the issues in this litigation are so related to the possible interests of Texas, and

other States situated on the Gulf of Mexico, in the subject matter of this suit, that the just, orderly, and effective determination of such issues requires that they be adjudicated in a proceeding in which all the interested parties are before the Court." *United States* v. *Louisiana*, 354 U. S. 515. Texas now asks the Court to reverse that determination. No adequate reason for doing so has been shown.

The affirmative position of the United States is the same as to all five defendants. It is, briefly, that the United States holds all rights in the seabed except those which it has granted to the States; that its only such grant was by the Submerged Lands Act, 67 Stat. 29, 43 U. S. C., Supp. IV, 1301–1315, which was specifically limited to land within State boundaries; that the boundary of the United States has never extended more than three miles from the coast; that State boundaries cannot extend farther than the national boundary; and that consequently no State can have received anything beyond the national boundary under the terms of the Submerged Lands Act. This claim consists entirely of propositions of law, or facts subject to judicial notice, common to the claims against all five defendants, and so presents an appropriate situation for joinder. Rule 20 (a), Federal Rules of Civil Procedure.

Each of the defendants has asserted reasons, based generally on peculiarities of its own history, for claiming that its boundary is more than three miles

from the coast.[1] Texas contends that a joint argument would "prejudice the presentation of the defenses of Texas by leading to a confusion of its rights and claims with those to be asserted by the other defendant States." Answer of the State of Texas to the Motion of the United States for Judgment, etc., 10. The United States finds no reason to apprehend that the Court will fall into any such confusion. To permit complete separation of the contentions of the defendants, if they wished to defend separately, we stated a separate cause of action against each, although those causes of action are identical except for reference to prior judgments as against Louisiana and Texas. Each defendant has answered separately, and presumably each will file a separate brief. Our own brief will deal with the defenses of each separately, except for using cross-references to avoid duplication where similar defenses are made by more

[1] Louisiana asserts, among other things, that Texas and Florida have three-league boundaries, and that "equal footing" entitles Louisiana to as much. Answer of the State of Louisiana to the Amended Complaint, 11–12; Answer of the State of Louisiana [to the original complaint], 23–24, incorporated by reference, Answer of the State of Louisiana to the Amended Complaint, 12. The United States denies that either of those States has a three-league boundary. Amended Complaint, 8, 17. In any event, it denies that "equal footing" would entitle Louisiana to claim a grant of three leagues under the Submerged Lands Act. Brief for the United States in Support of Motion for Judgment [against Louisiana, on the original complaint], 150–152. On the pleadings, however, the rights of Texas and Florida have unquestionably been made ingredients of Louisiana's claim, a circumstance which the Court may consider entitled to some weight in deciding Texas' motion for severance.

than one defendant. In the memorandum accompanying our Motion for Judgment, etc. (filed January 20, 1958), we suggested (p. 5) an order of argument which would permit each State's defenses to be presented and rebutted separately. The only effect of the severance requested by Texas would be to subject the Court and counsel to the unnecessary burden of a repetition of the Government's case in chief.

2. The motions for leave to take evidence should be denied or deferred for hearing and decision with the Federal Government's motion for judgment. The United States has moved for a judgment, as against the defendant States, fixing its rights in the seabed. If the Court agrees with us that the determination of the extent of the national and state boundaries can be made as a matter of law in the light of facts subject to judicial notice, then the motions for leave to take evidence should be denied. If the Court is not prepared so to rule at this time, it should consider the motions simultaneously with the Government's motion for judgment, rather than now ordering the taking of evidence on a multiplicity of factual issues which the ruling on the Government's motion may render wholly irrelevant. That was the procedure followed in *United States* v. *Louisiana,* 339 U. S. 699, 706, and *United States* v. *Texas,* 339 U. S. 707, 720, where motions for jury trial and to take depositions and evidence before a special master, made some months before briefs on the merits were filed, were denied simultaneously with the rulings on the motions for judgment. That was also the procedure followed at the last Term when the

case involved only Louisiana; the Federal Government's motion for judgment and the State's motion for leave to take depositions were both set down for argument together. 352 U. S. 979; see 354 U. S. 515.[2]

CONCLUSION

For the foregoing reasons, Texas' motion for severance should be denied and Texas', Florida's, and Mississippi's motions for leave to take evidence should be denied or deferred for consideration with the Federal Government's motion for judgment.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

MARCH 1958.

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[2] After entry of a judgment in general terms, it may be necessary to enter supplementary judgments giving the general judgment precise application to particular terrain, and evidence may need to be taken for that purpose, as in *United States* v. *California*, 332 U. S. 19, 342 U. S. 891, but no such question is presented by the instant motions or at this time.

U. S. GOVERNMENT PRINTING OFFICE, 1958

MAR 2 1 19
JOHN T. FEY,

IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1958

No. 10, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

Joint Memorandum of the States of Louisiana, Texas, Mississippi, Alabama, and Florida Pertaining to Schedule for Filing of Briefs and Order of and Allotment of Time for Oral Argument

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March 17, 1958

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 11, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

Joint Memorandum of the States of Louisiana, Texas, Mississippi, Alabama, and Florida Pertaining to Schedule for Filing of Briefs and Order of and Allotment of Time for Oral Argument

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Pursuant to the Court's order of March 3, 1958, counsel for the States of Louisiana, Texas, Mississippi, Alabama, and Florida, respectively, suggest that the United States be required to file its brief by May 15, 1958, that the States be required to file their respective replies thereto by August 15, 1958, and that any brief in rebuttal or further reply by any party be filed by September 15, 1958.

Counsel for defendants propose to confer with counsel for the United States and with each other seeking agreement in order to suggest to the Court the order of and allotment of time for oral arguments, all within thirty days from March 3, 1958, in accordance with the order of the Court.

Respectfully submitted,

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PROOF OF SERVICE

I, Will Wilson, a member of the Bar of the Supreme Court of the United States, certify that on the 14th day of March, 1958, I served a copy of the foregoing memorandum by mailing, postage prepaid, copies thereof to the office of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

WILL WILSON
Attorney General of Texas

March 17, 1958